

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>WILLIAM DECORY,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>STATE OF SOUTH DAKOTA; COUNTY OF PENNINGTON; THE ATTORNEY GENERAL FOR THE STATE OF SOUTH DAKOTA,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: right;">5:22-CV-05093-RAL</p> <p style="text-align: center;">ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL AND DENYING PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY</p>
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Petitioner William DeCory filed a Petition for Writ of Habeas Corpus. Doc. 1. Because DeCory did not indicate whether his petition was pursuant to 28 U.S.C. § 2254 or 28 U.S.C. § 2241, this Court construed DeCory's petition as pursuant to both sections. See Doc. 10. This Court granted DeCory leave to proceed in forma pauperis and dismissed DeCory's petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.¹ Id. DeCory appeals this Court's dismissal of his petition and moves for leave to proceed in forma pauperis on appeal. Docs. 12, 13. Although DeCory has provided some prisoner trust account documentation, he has not provided a prisoner trust account report. See Doc. 13-1. He has also filed a motion to transfer this case to the United States Court of Appeals for the Eighth Circuit and a second notice of appeal. Docs. 12-1; 14.

I. Motion for Leave to Proceed in Forma Pauperis on Appeal

¹ The Rules Governing Section 2254 Cases also apply to habeas petitions filed under § 2241. See Rule 1(b), Rules Governing § 2254 Cases.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. Malave v. Hedrick, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in “good faith.” 28 U.S.C. § 1915(a)(1), (3).

Under Federal Rule of Appellate Procedure 24(a)(3), a party who was previously allowed to proceed in forma pauperis in district court “may proceed on appeal in forma pauperis without further authorization, unless . . . the appeal is not taken in good faith[,] . . . the party is not otherwise entitled to proceed in forma pauperis[,] . . . [or] a statute provides otherwise.” DeCory’s appeal appears to be taken in good faith. Thus, DeCory’s motion for leave to proceed in forma pauperis on appeal, Doc. 13, is granted.

II. Motion for Certificate of Appealability

DeCory has filed a motion in which he seeks to transfer this case to the Eighth Circuit and a second notice of appeal. Docs. 12-1; 14. This Court construes DeCory’s filings as seeking a certificate of appealability and will treat DeCory’s second notice of appeal as a motion for a certificate of appealability. See Docs. 12-1; 14. “[A] state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition.” Miller-El v. Cockrell, 537 U.S. 322, 335 (2003) (citing 28 U.S.C. § 2253). “Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a [certificate of appealability] from a circuit justice or judge.” Id. at 335–36. A certificate may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A “substantial showing” demonstrates that “reasonable jurists would find the district

court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). This Court finds that DeCory has not made a substantial showing that his constitutional rights were denied, so no certificate of appealability will issue. See 28 U.S.C. § 2253(c)(2). DeCory's motion for certificate of appealability, Doc. 14, is denied.

Accordingly, it is

ORDERED that DeCory's motion for leave to proceed in forma pauperis, Doc. 13, is granted. It is further

ORDERED that DeCory's motion for certificate of appealability, Doc. 14, is denied.

DATED May 16th, 2023.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Roberto A. Lange", is written over a horizontal line.

ROBERTO A. LANGE
CHIEF JUDGE